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Brinkman Co. v. Central Bank, 116 Mo. 558; *Fox v. Easter*, 10 Okla. 527; *School Dist. No. 9 v. School Dist. No. 5*, 118 Wis. 233; *Brown v. Board of Education*, 103 Cal. 531; *Burton v. Rosemary Mfg. Co.*, 132 N. C. 17. But the rule has not received universal acceptance, and in the following cases the courts refuse longer to permit fictions to take the place of facts: *Bank v. Corbett*, 2 Minn. 209; *Pioneer Fuel Co. v. Hager*, 57 Minn. 76; *Penn. Mutual Life Ins. Co. v. Conoughy*, 54 Neb. 123; *Ball v. Beaumont*, 59 Neb. 631, 633; *Bowen v. Emmerson*, 3 Ore. 452; *Hammer v. Downing*, 39 Ore. 504. And in Connecticut the rule is peculiar. *Cummings v. Gleason*, 72 Conn. 587; *McNamara v. McDonald*, 69 Conn. 484. Although excluded in a few states, the use of the common counts seems to be well settled. In fact, their application has been so liberal in many states that the plaintiff is permitted to recover on a common count (quantum meruit) when the evidence discloses a special contract, the court in such cases giving to the pleading an effect not recognized at the common law. The only effect in such a case of proof of an express contract fixing the price is that the stipulated price becomes the quantum meruit in the case. *Jenney Electric Co. v. Branham*, 145 Ind. 314; *Roberts v. Leak*, 108 Ga. 806; *Hecla Gold Mining Co. v. Gisborn*, 21 Utah 68; *Vanderbèek v. Francis*, 75 Conn. 467. Contra. *Roche v. Baldwin*, 135 Cal. 522; *Duncan v. Gray*, 108 Ia. 599; *Bond v. Corbett*, supra; *Burton v. Rosemary*, supra. The common counts general in form, were introduced originally to take the place of the detailed and intricate pleading at the common law, and immediately found favor because of their convenience. Their general use before the adoption of the code is in some measure a justification for what is believed to be a clear violation of the mandate of the Legislature as expressed in the reformed procedure acts.

RAILROADS—CONSOLIDATION—CONDEMNATION OF DISSENTING STOCK.—Pursuant to legislative authority the plaintiff leased the New Haven and Derby Railroad for 99 years. By a special statute the plaintiff was authorized to exchange its own shares for the shares in any railroad which it might lease, and after acquiring all such shares the stock and franchises of the respective companies could be merged. All but two shares of the outstanding stock of the lessee were acquired by plaintiff. They were owned by defendant, who refused to agree on terms of purchase. Condemnation proceedings were brought under a Connecticut law authorizing a railroad company, which has acquired more than three-fourths of the stock of another railroad company, and cannot agree with the holders of the outstanding stock for the purchase thereof, to condemn it on a finding by the court that it will be for the public interest. In this case the lessee railroad, having a mileage of 17 miles, and a funded indebtedness of \$1,200,000, forms an important link in all rail route between Boston and the West. Extensive improvements are necessary, the means for which the lessee company does not possess, but which are possessed by the condemning company. *Held*, (1) that the Legislature has power to authorize condemnation proceedings, (2) that such condemnation will serve the public interest, (3) that the law does not impair the obligation of contracts. *New York, New Haven & Hartford Railroad Company v. Offield* (1905), — Conn. —, 59 Atl. Rep. 510.

The extreme desirability of consolidation and the evident fact that it would be for the public interest under such circumstances almost lead one to endorse this opinion and approve this exercise of the power of eminent domain. The following cases justify the use of eminent domain in regard to railway shares under some conditions. *Railway Company v. Garret*, 50 Ohio St. Rep. 405; *Gregg v. Northern Railroad*, 67 N. H. 452. But the decision in the principal case is unsatisfactory and incomplete in respect to the fact that it does not show under what conditions and terms the charter of the lessee company was originally granted and, in a word, with insufficient comment, holds that the statute does not impair the obligation of a contract. In the absence of a reserve power to consolidate or amend, in the constitution or the charter, upon principle it would seem that the unanimous consent of the shareholder must be secured in order to consolidate. I WILGUS CORPORATION CASES, 1004. Yet the leading writers recognize that shares of dissenting stockholders may be seized under the power of eminent domain. See 3 MICH. LAW REV. 309 for further discussion.

SAVINGS BANKS—PAYMENT OF FORGED ORDER AFTER DEATH OF DEPOSITOR.—An action was brought by an administratrix to recover the amount of intestate's deposit, in a savings bank, with interest. The money had all been paid out by defendant on five orders presented with the pass-book at various times after the death of the depositor, and purporting to be signed by the depositor, though in reality the signatures were forged. Defendant had no knowledge of depositor's death at the time of making any of the payments. It was found on the trial that by a critical examination and physical comparison of the signatures on the orders with that on the signature book the forgery would have been apparent. *Held*, that defendant was liable. *Kelley v. Buffalo Savings Bank* (1904), — N. Y. —, 72 N. E. Rep. 995.

One of the rules of the bank provided that "the secretary will endeavor to prevent frauds, but all payments made to persons producing the deposit books or duplicates thereof, shall be good and valid payments to the depositors respectively." Another rule provided that "on the decease of any depositor the amount standing to the credit of the deceased shall be paid to his or her legal representatives when legally demanded." The decision is based on the fact that due diligence was not exercised by defendant to ascertain the identity of the party presenting the pass-book, and is in accord with reason and authority. It has quite generally been held, under similar circumstances, that the bank is bound to exercise at least ordinary diligence. *Appleby v. Erie Co. Sav. Bank*, 62 N. Y. 12; *Sullivan v. Lewiston Inst. of Sav.*, 56 Me. 507; *Ladd v. Augusta Sav. Bank*, 96 Me. 510; *Brown v. Merrimac River Sav. Bank*, 67 N. H. 549. And where the bank has agreed to "use its best efforts to prevent fraud" it is bound to the exercise of more than ordinary diligence. *Allen v. Williamsburgh Sav. Bank*, 69 N. Y. 314. See also *Kummel v. Germania Sav. Bank*, 127 N. Y. 488, 13 L. R. A. 786. In *Schoenwald v. Metropolitan Sav. Bank*, 57 N. Y. 418, however, it was held that the bank had a right to pay to anyone presenting the pass-book, and that the fact that a receipt was forged was immaterial. Where the depositor is dead, however, it has been held that the rule as to diligence no longer applies, the bank